

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3151 OF 2019

SHIVAJI NARAYAN BOMBADE
VERSUS
BHAGWAT NARAYAN BOMBADE AND ANOTHER

...

Advocate for Petitioner : Mr. Suraj Gundre
Advocate for Respondent No. 1: Mr. Sandeep Swami

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORDER :

1. The challenge in this petition is to the order passed by the learned 5th Joint Civil Judge, Senior Division, Latur below Exhibit-35 in Miscellaneous Application No. 311/2017, whereby prayer of the petitioner seeking stay to the said proceeding is rejected.

2. Petitioner is the real brother of respondents. By filing proceeding under Bombay Regulation Act, 1827 (for short 'the Regulation'), respondent No. 1 has sought heirship certificate under rule 2 of the Regulation in respect of his father Narayan Sambhaji Bombade and mother Mathurabai Narayan Bombade.

3. Petitioner has filed Regular Civil Suit No. 47/2018 against the respondents claiming declaration of ownership and partition of ancestral property.

4. By filing application Exhibit-35, petitioner sought stay to the proceeding filed by respondent No. 1 under the Regulation, on the ground that, petitioner has already filed civil suit for declaration and partition of ancestral property. Respondents resisted said application by filing written say. Trial Court has rejected the said application on the ground that proceeding filed under the Regulation and suit are different. Proceedings under the Regulation are not filed to prove right on any property. Since, only heirship certificate is sought, it is not necessary to stay the proceeding. Hence, this petition.

5. The scope of this Regulation is considered by the learned Single Judge of this Court in *In Re: Ganpati Vinayak Achwal* (Manu/MH/1485/2014), as follows:

"4. The object of the Regulation, it's first recital and Rules 1 to 3 of it's Chapter-I, which are relevant for the present purposes, read as follows:-

"A Regulation to provide for the formal recognition of heirs, executors and administrators and for the

appointment of administrators and managers of property by the Courts.

WHEREAS, at the same time that it is in general desirable that the heirs, executors or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management or sue for the recovery for property belonging to the estate, without the interference of Courts of justice, it is yet in some cases necessary or convenient that such heirs, executors or administrators, in order to give confidence to persons in possession of, or indebted to, the estate to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship, from the Zila Court."

CHAPTER I

"Rules for the Recognition of Heirs, Executors and Administrators when there is a Competent Claimant

1. Legal heir, etc., of person deceased competent to represent him without recognition from court: Whenever a person dies leaving property, whether movable or immovable, the heir or executor, or legal administrator may assume the management, or sue for the recovery, of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the Court to be formally recognised.

2. First. But if such recognition requested, proclamation will be issued: But if an heir, executor

or administrator is desirous of having his right formally recognized by the Court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the applicant to appear in the Court within one month from the date of the proclamation and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second. Publication of proclamation:

[Re. Act XII of 1873]

3. If no objection appears, recognition to be granted:

If, at the expiration of the time mentioned in the proclamation, no sufficient objection has been made, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and, if satisfied, shall grant a certificate in the form contained in Appendix B, declaring him the recognized heir, executor or administrator of the deceased."

6. It is further held that *"the position of law that emerges from the above provisions is that, an heirship certificate does not bestow the status of an heir upon a person. Grant of such certificate is only on formal recognition of his existing status as an heir. An heir or executor or legal administrator, by his such status, can assume management of the property of the deceased even without a formal recognition by the Court."*

It is thus clear that purpose of the certificate is a formal recognition of status of a person. The heirship certificate does not confer any right, title or interest, in the property, to its holder.

7. Since the petitioner has already raised objection for issuance of heirship certificate in favour of respondent No. 1, the petitioner is entitled to contest the said application and claim for issuance of heirship certificate in his name also.

8. In the suit instituted by the petitioner the Civil Court will decide about right, title and interest of the property and the said decision will prevail on the decision given by the Court under the Regulation.

9. The Trial Court has rightly rejected the prayer of the petitioner for stay to the said proceeding. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant interference in extraordinary writ jurisdiction. The petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]